THE HONOURABLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P.No. 15896 of 1997

ORAL ORDER:
(Per T. Meena Kumari, J)

The present Writ Petition is filed against the orders passed by the learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.No.961 of 2006 dated 13.4.1997.

Before the learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad, O.A.No. 961 of 2006 was filed by nearly 49 applicants. The learned counsel for the petitioner submits that the learned tribunal has treated the applicant No.1 to represent in a representative capacity and directed him and his counsel to delete other applicants and the 1st applicant representing the Accounts Stock Verifiers category filed this Writ Petition son behalf of other Accounts Stock Verifiers. The President has sanctioned vide proceedings No.P.C.IV/87/IMP/7, dated 3.3.1989 to the effect that the stock verifiers in the category of 1400-2600 shall be given three advanced increments on passing the Appendix-IV(A) Examination after completion of four months training which would be effected from 1.1.1986 or the date from which the employee opted for the revised pay scale or from the date on which they were selected to Accounts Stock Verifiers category. The learned counsel for the applicant further submits that by the subsequent proceedings dated 8.5.1996 it was clarified that the additional increments granted to the staff for passing Appendix IV will not be treated as part of the basic pay and therefore, he is not liable for calculating the D.A. It was contended by the learned

counsel that before the Central Administrative Tribunal, M.A.No.853 of 1986 was filed for suspension of the operation of the impugned letter No. PC.IV/87/IMP/7 dated 8.5.1996.

The respondent-department filed a reply in the said O.A. contending that three additional increments granted to the Accounts Stock Verifiers are to be treated as qualification pay and as an incentive for passing the Appendix IV-A examination and is not entitled for D.A. on additional increments in view of the Railway Boards letter No. IC-IV/86/DA/1 dated 25.11.86. It is also the contention of the Railway Board that the said circular has been issued in agreement with the JCM with the approval of the President of India, which has statutory force.

The main contention advanced on behalf of the department is that additional increments are only inclusive for passing of respective examinations by the individuals, but not attached to the post, whereas the basic pay and the allowances and the emoluments are attached to the post and the increments are not calculated for grant of pension and gratuity. It is also the further contention of the department that prior to 1996, the grant of three additional increments were added to basic pay, but subsequent to 1996, when a mistake was traced, it has been discontinued by issuance of the impugned proceedings dated 11.7.1996. The above contention have been repealed by the petitioners herein by filing rejoinder before the Central Administrative Tribunal and also contended that there was an award passed to the effect that the post of stock verifiers do not have a further promotion and Justice Wanchoo's Committee had recommended for additional increments for passing the Appendix 4-A examination and they were came into force from February, 1973 onwards and the work of

Account Stock Verifiers is of arduous nature.

On the above contentions, the learned tribunal having gone into the merits of the case has held that the petitioners herein are not entitled in view of the cut off date 25.11.1986 as contained in the letter dated 11.7.1996 has made it clear that the stock verifiers, who have passed Appendix IV examination on or before 25.11.1986 are only entitled for two advanced increments and it would be made as part of the basic pay and hence the cut off date as contained under the said letter dated 25.11.1986 cannot be treated as arbitrary. With the above proposition, the learned tribunal has not agreed with the contentions of the petitioner herein and accordingly ordered the O.A. and aggrieved by which the present Writ Petition has been preferred.

The learned counsel for the department has contended before us more or less on similar lines to the effect that the personnel who have passed Stock Verifier examination of Appendix IV are only entitled for three additional advanced increments and it is an incentive to attract the persons to the said post since they are not having any promotional channels. Under the above circumstances, in view of the duties attached to the post of stock verifiers, the additional three increments have to be treated as a part of basic pay and the D.A. has to be paid accordingly, which is very clear from the letter of the President which emanated from f.r. 27 of the Code Vol. II. The said contention has been repeated by the learned Senior Counsel appearing for the Petitioner Mr. S.R. Ashok stating that the additional increments attached to the individual on his passing of the test of appendix IV examination and whereas basic pay is attached to the post and it cannot be treated as a part of the basic pay and it can be treated

as only other allowances. The pay was defined in f.r. 9 of Railway Establishment Code Vol. II. 1987 Edition, which reads as follows:

> "1303 (F.R.9 (21(1))- "Pay means the amount drawn monthly by a government servant as:
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> (i) the pay other than special pay or pay granted in view of the personal qualifications, which has been sanctioned for a post held by him substantively or in any officiating capacity or which he is entitled by reason of his position in the cadre, and
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> (ii) overseas pay, special pay and personal pay; and
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> (iii) any other emoluments which may be specifically classified as pay by the President."

1321 (F.R.27) deals with premature increments – subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a railway servant on a time-scale of pay if it has power to create almost in the same cadre on the same scale of pay.

Under these circumstances, it is clear that the special pay granted is subject to any special or general orders passed by the President and the definition of pay does not include any special increments that would be paid as a incentive in the definition of pay. Therefore, it cannot be said to be exhaustive so as to include the grant of the three additional increments. In the absence of lacuna in the definition of pay, it cannot be said that the three additional increments which are meant for the stock verifiers for passing appendix IV examination can be added to the basic pay.

Under the above circumstances, we do not find any reasons to interfere with the order of the learned Central Administrative

Tribunal. However, we make it clear that the amount already paid by the department to the petitioners shall not be recovered, as it is not a case of misrepresentation or fraud as there is no material placed by the respondents-department that the amounts are paid under mistake or mis-representation or fraud.

Accordingly, the Writ Petition is dismissed.

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T. MEENA KUMARI, J

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D. APPA RAO, J

11.9.2007

CHV